

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871 (TOM11)

Joint Administration Requested

**FIRST OMNIBUS MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION
FOR ENTRY OF AN ORDER (I) AUTHORIZING REJECTION OF UNEXPIRED
LEASES, AND (II) SETTING A DEADLINE FOR
THE FILING OF REJECTION CLAIMS**

Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a “Debtor” and, collectively, the “Debtors”), by their undersigned proposed counsel and pursuant to sections 105(a) and 365(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), hereby move (the “Motion”) for entry of an order substantially in the form of that attached hereto as **Exhibit A** authorizing and approving the rejection of certain unexpired leases, effective as of the Petition Date, and setting a deadline for the filing of rejection claims. In support of the Motion, the Debtors rely upon and hereby incorporate by reference the *Declaration of David Baker in Support of First-Day Motions* (the “Baker Declaration”), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are Sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006.

BACKGROUND

I. Introduction.

4. On October 25, 2023 (the “Petition Date”), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.
5. The Debtors continue to manage and operate their businesses as a debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
6. No official committee of unsecured creditors has been appointed.
7. No request for a trustee or examiner has been made in these chapter 11 cases.
8. Information regarding the Debtors’ businesses and the circumstances leading to the commencement of these chapter 11 cases is set forth in the Baker Declaration. Those facts are incorporated herein by reference.

II. The Leases to be Rejected.

9. The Debtors entered into certain lease agreements for the use of commercial property in connection with operating various Burger King restaurants (the “Restaurants”). As further explained in the Baker Declaration, the Debtors closed a number of Restaurants in the lead up to these Chapter 11 Cases due to unprofitability and tightening liquidity. This Motion seeks to reject, as of the Petition Date, certain leases for those commercial properties where the Debtor, in its business judgment, decided prior to the Petition Date, to close the Restaurants formerly operated

at those properties to preserve the value of the estates for the benefit of the Debtors and their creditors (the “Closed Stores”). A list of the Closed Stores and the leases the Debtors seek to reject is attached hereto as **Exhibit B** (the “Rejected Leases”).

III. Notice to Counterparties to the Rejected Leases.

10. Pursuant to Bankruptcy Rule 6006(f), counterparties to the Rejected Leases are hereby notified that they should locate their names and leases on the attached Exhibit B, where each Rejected Lease is listed alphabetically by counterparty.

RELIEF REQUESTED

11. By this Motion, the Debtors seek authority under section 365(a) of the Bankruptcy Code to reject the Rejected Leases set forth on Exhibit B hereto, effective as of the Petition Date. The Debtors further ask the Court to set the deadline for any non-Debtor party to the Rejected Leases to file any claims for “rejection damages” within thirty (30) days after entry of the Order authorizing the Debtors to reject the Rejected Leases.

BASIS FOR RELIEF REQUESTED

12. Section 365 of the Bankruptcy Code provides that a debtor-in-possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Rejection under section 365 is generally intended to enable the debtor to relieve itself and the bankruptcy estate from burdensome and unprofitable contracts or unexpired leases in order to preserve and maximize the value of the bankruptcy estate. Stewart Title Guar. Co. v. Old Republic Nat’l Ins. Co., 83 F.3d 735, 741 (5th Cir. 1994); In re Mirant Corp., 303 B.R. 319, 330-31 (Bankr. N.D. Tex. 2003) (“There is substantial authority for the proposition that section 365 was intended to allow a trustee or debtor in possession to eliminate burdensome, unprofitable contracts and preserve for the estate's benefit valuable agreements.”).

13. The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. Nat’l Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (stating that “the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgement’ test”). The business judgment standard is satisfied when a debtor determines that rejection will benefit the estate. Commercial Fin. Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) (“Under the business judgment test, a court should approve a debtor’s proposed rejection if such rejection will benefit the estate.”) (citation omitted).

14. Courts generally do not second guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease. See Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985), cert. denied, 475 U.S. 1057, 104 S. Ct. 1285 (1986), superseded by statute, 11 U.S.C. § 365(n); In re Health Science Products, Inc., 191 B.R. 895, 909 n.15 (Bankr. N.D. Ala. 1995) ("The issue hereby presented for determination by the bankruptcy court is whether the decision of the debtor is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, whim or caprice.").

15. Here, the Debtors have satisfied the business judgment standard because each of the Rejected Leases corresponds to a Restaurant location that was unprofitable and that the Debtors closed prior to the Petition Date. Given these circumstances, unless the Rejected Leases are promptly rejected, the continuing post-petition costs of retaining the Closed Stores and the Rejected Leases would undermine the Debtors’ efforts to maximize the value of the Debtors’ estates and would be unnecessary burdens on the Debtors’ estates.

16. The Debtors further ask that the Court deem the Rejected Leases to be rejected as of the Petition Date to ensure that any claims under such Rejected Leases will be treated as unsecured pre-petition claims in accordance with section 365(g)(1) of the Bankruptcy Code. See Nat'l Labor Relations Bd. v. Bildisco, 465 U.S. 513, 530 (1984) (stating that rejection relates back to the petition date). The Debtors do not believe the Rejected Leases provide the basis for a claim for administrative expense priority because the Rejected Leases are a burden rather than a benefit to the estates. See In re O.P.M. Leasing Services, Inc., 56 B.R. 678, 683 (Bankr. S.D.N.Y. 1986).

17. Prior to the filing of this Motion, the Debtors removed all personal property previously located in the Closed Stores that have any value, and respectfully request that the Order approving this Motion include a provision that any property of the Debtors still located at the Closed Stores be deemed abandoned, so that the landlords for the Closed Stores may dispose of any such personal property as each such landlord may deem fit.

RESERVATION OF RIGHTS

18. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, an admission that any claim is of a type specified in this Motion, or a waiver or limitation of the Debtor's rights under the Bankruptcy Code or applicable law.

NOTICE

12. The Debtors will provide notice of this Motion to: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) the holders of the forty (40) largest unsecured claims against each of the Debtors; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank, National Association, as Prepetition Agent for the Lender Group; (e) the United States Attorney's Office for the Northern District of Alabama; (f) the Internal Revenue Service; (g) the office of the Attorney General for the State of Alabama; (h) the Securities and Exchange

Commission; (i) the counterparties to the Rejected Leases or, where known, their counsel, and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested herein, and such other and further relief as the Court deems just and proper.

Dated: October 26, 2023
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.

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EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,²

Debtors.

(Chapter 11)

Case No. 23-02871 (TOM11)

Joint Administration Requested

**ORDER (I) AUTHORIZING REJECTION OF CERTAIN UNEXPIRED LEASES AND
(II) SETTING A DEADLINE FOR THE FILING OF REJECTION CLAIMS**

Upon consideration of the motion (the “Motion”)³ of the Debtors for entry of an order authorizing rejection of certain unexpired leases and setting a deadline by which counterparties to the Rejected Leases must file claims for rejection damages; and upon consideration of all pleadings related thereto, including the Baker Declaration; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED;

² The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.

³ All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtors' proposed rejection of the Rejected Leases on Exhibit B to the Motion is hereby approved, effective as of the Petition Date;

3. Any claim for damages on account of the rejection of the Rejected Leases shall be filed within thirty (30) days of the date of this Order;

4. The Debtor is authorized to take all necessary actions to effectuate the relief granted pursuant to this Order in accordance with the Motion; and

5. To the extent that any property of the Debtors remains in the Closed Stores as of the entry of this Order, any such property shall be deemed to be abandoned and no longer property of the Debtors' bankruptcy estate, and the respective landlords of the Closed Stores are hereby authorized to dispose of any such property as they may deem fit.

6. The Court shall retain jurisdiction to hear and determine all matter arising from the implementation of this Order.

Dated: _____, 2023
Birmingham, Alabama

TAMARA O. MITCHELL
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

SCHEDULE OF REJECTED LEASES

Store Number	Store Address	Lessor	Debtor
12279	1165 Ross Clark Cr Loc 112 Dothan, AL 36301	ARC CAFEUSA001 c/o Vereit Inc. 11995 El Camino Real San Diego, CA 92130 Property ID 8842	Premier Kings, Inc.
8457	505 E Cumming Ave Loc 113 Opp, AL 36467	ARC CAFEUSA001 c/o Vereit Inc. 11995 El Camino Real San Diego, CA 92130 Property ID 8846	Premier Kings, Inc.
5490	517 Cahaba Circle Loc 8 Birmingham, AL 35242	Burger King Corporation 5707 Blue Lagoon Drive Miami, FL 33126	Premier Kings, Inc.
15339	141 Gateway Cr #15339 Jacksonville, FL 32259	Burger King Corporation 5707 Blue Lagoon Drive Miami, FL 33126	Premier Kings of Georgia, Inc.
846	2682 Candler Road Decatur, GA 30034	Burger King Corporation 5707 Blue Lagoon Drive Miami, FL 33126	Premier Kings of Georgia, Inc.
16228	100 Wiebel Drive Midfield, AL 35228	Burger King Corporation 5707 Blue Lagoon Drive Miami, FL 33126	Premier Kings, Inc.
12295	1701 Fulton Road Fultondale, AL 35068	Burger King Corporation 5707 Blue Lagoon Drive Miami, FL 33126	Premier Kings, Inc.
16269	1262 Highway 21 S Springfield, GA 31329	Crown Premier Properties, LLC 10 Mall Court, Suite A Savannah, GA 31411	Premier Kings of Georgia, Inc.
16460	529 Claxton Ave Loc 119 Elba, AL 36323	DPI Group, LLC P.O. Box 3377 Fresno, CA 93650	Premier Kings, Inc.
4856	119 Hwy 138 Stockbridge, GA 30281	Genea Property, LLC 3344 Peachtree Road NE, Unit 3205, Atlanta, GA 30326	Premier Kings of Georgia, Inc.
6534	3182 Montgomery Hwy Dothan, AL 36303	Karen L. Nystrom 1090 Deanna Drive Menlo Park, CA 94025	Premier Kings, Inc.
20826	530 Fieldstown Rd Gardendale, AL 35071	Luther Smith 645 Marion Hills Way Knightdale, NC 27545	Premier Kings, Inc.
20826	530 Fieldstown Rd Gardendale, AL 35071	Premier Holdings, LLC c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL, 36103-4540	Premier Kings, Inc.
22245	1752 Highway 431 Boaz, AL 35957	Premier Kings Holdings, LLC c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL, 36103-4540	Premier Kings of North Alabama, LLC

22010	3076 Pelham Pkwy Pelham, AL 35124	Premier Kings Holdings, LLC c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL, 36103-4540	Premier Kings, Inc.
18636	945 West South Blvd Montgomery, AL 36105	Premier Kings Holdings, LLC c/o Robert Ritchey P.O. Drawer 4540, Montgomery, AL, 36103-4540	Premier Kings, Inc.
10728	53 South Broad Street Porterdale, GA 30014	Premier Kings Holdings, of Georgia, LLC c/o Robert Ritchey P.O. Drawer 4540 Montgomery, AL, 36103-4540	Premier Kings of Georgia, Inc.
8152	5961 Chalkville Mtn Hwy Birmingham, AL 35253	Schuster Enterprises P.O. Box 12029 Columbus, GA 31917-2029	Premier Kings, Inc.
20519	Walmart Supercenter #1373 4004 Lawrenceville, Highway Lilburn, GA 30047	Walmart Realty Company 2001 SE 10th Street Bentonville, AR 72716-5525	Premier Kings of North Alabama, LLC